

Approved May 24, 2006



**PLANNING COMMISSION  
CITY OF SCOTTSDALE  
CITY HALL KIVA  
3939 NORTH DRINKWATER BOULEVARD  
SCOTTSDALE, ARIZONA  
MAY 10, 2006**

**STUDY SESSION MINUTES**

**PRESENT:** Steve Steinberg, Chairman  
James Heitel, Vice-Chairman  
David Barnett, Commissioner (arrived 4:07)  
Jeffrey Schwartz, Commissioner  
Steven Steinke, Commissioner  
Eric Hess, Commissioner (arrived 4:12)  
Kevin O'Neill, Commissioner

**STAFF PRESENT:** Lusia Galav  
Sherry Scott  
Tim Curtis  
Frank Gray  
Sherry Scott  
Don Hadder

1. **CALL TO ORDER**

The study session of the Scottsdale Planning Commission was called to order by Chairman Steinberg at 4:05 p.m.

2. **ADMINISTRATIVE REPORT - LUSIA GALAV**

None.

3. **REVIEW OF MAY 10, 2006 AGENDA**

**INITIATION**

Ms. Galav stated this was an initiation of minor amendments to the ESL.

In response to a question by Chairman Steinberg, Mr. Hadder confirmed that prior to the text amendment a site clearing could be done without a site plan approval.

Commissioner Schwartz commented about problems with developers during the last ESL update. He inquired whether there would be more community involvement than there was during the last ESL update in order to avoid the need to modify stipulations during the hearing because people felt that they were not informed. Mr. Hadder stated that this text amendment would go through the open house process. He explained that the amendment gives ordinance language to the system that has already been in use.

Commissioner Schwartz suggested that it may be beneficial to involve some of the larger projects that have significant infrastructure already built to participate in the process.

## **CONTINUANCES**

9-AB-2006

132nd St & Rio Verde

Ms. Galav explained the reason this abandonment was being continued was in order to work out a solution for the abandonment of the 25 foot Rio Verde portion. She explained that an agreement had been reached with Transportation and the item would be prepared in time for the next meeting.

## **EXPEDITED AGENDA**

### Approval of 2006 Planning Commission scheduled meetings

Ms. Galav explained that the legal department advised that the dates be approved by the Planning Commission because some of the meeting dates were outside of what the bylaws suggest.

1-AB-2006

Gold Dust Lot Split

Ms. Galav explained that the request was for an abandonment of a GLO in order to allow a lot split.

In response to an inquiry by Commissioner O'Neill about why staff was not recommending approval of the abandonment of one section, Mr. Curtis explained that after reviewing the original application, staff realized that they needed to keep the 25 foot right-of-way as well as an 8 foot trail easement which amounted to the 33 foot GLO half width. Staff felt that they would have the GLO underlie the new right-of-way dedication as well as the trail easement. The City prefers to maintain GLO easements when possible.

Discussion ensued concerning the City's interest in the GLO. Commissioner Schwartz explained that as a matter of course the City abandons its interest in the GLO; the reason for not abandoning the Gold Dust portion was in order to maintain the right-of-way as the 25 foot and 8-foot trail easements.

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In response to an inquiry by Commissioner Schwartz concerning cleaning up the GLO altogether and simultaneously granting easements to the City as needed, Ms. Galav explained that the City only gives up their interest in the GLO; there is no reason to abandon the GLO when it is being used as a right-of-way. The system is an acceptable legal instrument to get right-of-way easement and trail easement.

Commissioner Steinke commented that during the presentation at the last meeting, the Commission was told that the City does not do abandonments unless they are needed to accomplish a goal. In response to a question by Commissioner Steinke, Mr. Curtis confirmed that the goal of the applicants request was in conjunction with the land division and also a hardship exemption request. The land division could occur without the GLO abandonment being approved. The request has more to do with the land division application which would subsequently lead into the development of two-single family residential lots; Applicant would prefer not to have an encumbrance if it is not necessary.

In response to an inquiry by Commissioner Hess, Ms. Scott stated that as she understood the GLO would not appear as an encumbrance that is granted by the federal government on maps and plats once abandoned. Commissioner Hess opined that it would protect the City if it were shown on maps or if maps stated that the GLO existed but the City had abandoned interest.

Ms. Scott stated that if the City abandons its interest, the private property owner could have an interest. Whether they are properly recorded and how they are reflected on a map would be a private matter between property owners. She stated that staff would provide information from someone more knowledgeable about how GLO's are reflected on maps.

In response to comments by Commissioner Hess concerning cases where the City might grant a building permit over a GLO because it is not shown on a plat or map, Ms. Scott explained that the city is not required to do title reports and extensive research about an individual's property rights. The City looks at health and safety issues and the zoning ordinance when determining whether or not to issue a building permit.

Commissioner Hess inquired about who would enforce a violation in an easement if the City has abandoned its interest. Ms. Scott explained that from a legal standpoint the private property owners would pursue a private cause of action.

Commissioner Barnett referred back to the ESL case, noting that he was absent for part of that conversation. He inquired what the penalty would be if somebody did not comply with an ESL or comply with one of the minor text amendments; for example if they submitted documentation to the City after they started scraping. Mr. Hadder explained that it would depend on the circumstances; typically a citation would be issued. The Planning Commission would be informed of the situation during the process; rejuvenation of the site would be negotiated. Beyond negotiating rejuvenation, a judge would render a decision on the matter.

Commissioner Schwartz opined that once an area has been scraped, it is difficult to revegetate to its current condition. He inquired whether the ESL would talk about remedies that may discourage desecration of these areas. Mr. Hadder stated that a revegetation program would be a major statement. Commissioner Schwartz commented that the five hundred dollar a day fine was lenient for people who decide to grade when they know they are not supposed to go beyond their limits of NAOS or certain requirements of the ESL.

Vice-Chairman Heitel inquired whether the language should clarify that no building permit can be issued without an approved site plan in place of the current statement "to ensure that before any type of construction activities are started." Mr. Hadder stated that the key was having an approved site plan before any action that is going to affect the nature of the desert on a property.

Commissioner Barnett agreed with Commissioner Schwartz' comments regarding penalties, he inquired whether a penalty had ever been imposed on a daily basis for a violation. Mr. Hadder clarified that the legal staff would need to be consulted about whether a penalty system could be created from the main penalty section of the ordinance. Commissioner Barnett commented that he would like to see penalties significantly higher in order to serve as a deterrent. He opined that to a developer the current penalty is a cost of doing business.

Mr. Hadder stated that his initial response would be to require re vegetation to the condition prior to being scraped. Commissioner Barnett argued they would be paying the cost of putting the vegetation back which would not be a penalty; that situation would allow them to place trees wherever they wanted. Mr. Hadder clarified that the way the Ordinance is structured the possibilities are not clear, noting a judge assigns penalties and determines what the fine should be.

Ms. Scott explained as the code is currently written, the penalty phase is stricter with the second violation. Commissioner Schwartz commented that people would not need to grade a second time; they would see how much they could get done and how far they could push. He opined that a system should be in place so people cannot arbitrarily do what they want. Other parts of the Ordinance along with the ESL should be looked at in order to require harsher penalties.

Commissioner Barnett commented that the worst offenders are the ones for whom a deterrent is needed. He opined that a fine of \$500 would be fine for someone who grades creosote that can be replaced, but would not deter someone who wants to blade a gully or wash.

In response to an inquiry by Commissioner Hess regarding follow up for re vegetation situations, Mr. Hadder explained that a watering system would be required and be inspected periodically to be certain it is maintained.

Ms. Scott confirmed that violations attach to the actual person, not the property. She noted that concern about a developer placing a second property under someone else's name is understandable. She stated that when maximums are imposed there are always cases that deserve a little bit more, noting that she was not certain about the State statutes in terms of the City Court's ability to issue higher fines; an Ordinance change could be considered. Ms. Scott mentioned that a change would not be easily

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done because it is a section in the City Code, as opposed to the Zoning Ordinance. She confirmed that the Planning Commission could advise Council to have a dialogue about the ordinance. Staff will provide a legal memorandum for discussion and recommendation on the best way to move forward.

Commissioner Barnett requested that staff provide information pertaining to fines that are implemented in the City. He noted that he did not need to see citations for Code violations; he was interested in types of fines, location of fines, whether there was criminal action or second follow up fines.

4. **REVIEW OF MAY 24, 2006 TENTATIVE AGENDA**

Ms. Galav reviewed cases for May 24, 2006 which included four abandonments and one ESL text amendment, 2-TA-2006.

Commissioner Schwartz requested that the need for new residential developments in the southern part of the community be placed on the agenda for the May 24 meeting.

Commissioner Barnett requested that information regarding the fencing issue be brought to the May 24 meeting. Ms. Galav commented that staff had been discussing the use of mesh fencing that depicts the site project; research is being conducted to determine whether that would violate the sign Ordinance. Staff will bring additional information to the next meeting.

5. **ADJOURNMENT**

With no further business to discuss, the study session adjourned at 4:48 p.m.

Respectfully submitted,  
A/V Tronics, Inc.

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